

L.D. NO. 88-1

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
LITIGATION ALTERNATIVE PROGRAM

In the Matter of

SHARON McMILLAN,

-and-

SOMERVILLE BOARD OF EDUCATION,

-and-

Docket No. LAP-87-9

SOMERVILLE SCHOOL ADMINISTRATORS ASSOCIATION,

-and-

NEW JERSEY ASSOCIATION OF SCHOOL ADMINISTRATORS.

DECISION

Sharon McMillan ("McMillan"), the Somerville Board of Education ("Board"), the Somerville School Administrators Association ("SSAA" or "Principals' Organization") and the New Jersey Association of School Administrators ("NJASA" or "Supervisors' Organization") have agreed to submit the instant dispute to the Public Employment Relations Commission's ("Commission") Litigation Alternative Program ("LAP"). In this procedure, the parties describe and document the nature of their dispute to a Commission Designee. Failing a direct resolution of the issue by the parties, the Commission Designee issues a recommendation designed to resolve the dispute without prejudice to the parties' legal positions.

On August 25, 1987, I conducted an informal session with the parties concerning this dispute. The following representatives were present: Wayne J. Oppito, Esq. for Sharon McMillan; Steven Offen, Esq. for the Board; Robert Schwartz, Esq. for the SSAA and Al Bowden, Esq. for the NJASA.

The issue in this matter concerns the unit placement of the title of "Director of the Lafayette Program". This position is currently filled by McMillan. Both McMillan and the Board take the position that this title should be represented for purposes of collective bargaining by the SSAA. The SSAA, on the other hand, argues that the title of "Director" is not included in their bargaining unit, and thus has refused to represent McMillan. They maintain that the functions performed by McMillan are essentially those of a "Principal", and that her title should be changed to reflect that classification. The title of Principal is included in the SSAA's bargaining unit. The NJASA takes no position on McMillan's unit placement.

Background

In 1973, the Lafayette Program^{1/} was established in the Somerville School District. This program provides special education for neurologically impaired and emotionally disturbed children ages

^{1/} At that time, it was not referred to as a "Program", rather as the Lafayette School, reflecting the building in which it was housed. No other students or programs occupied the Lafayette School.

5-13. Prospective students are required to apply to the program and tuition is paid by their sending districts.

In 1979, John Fielding, McMillan's predecessor, became Principal of the Lafayette School. In 1980, due to declining enrollment in the district overall, the special education program was moved to the unused "C" wing of the VanDerveer Elementary School, where it remains today.^{2/} At that time, Fielding's title was changed from Principal of the Lafayette School to Principal of the Lafayette Program.

In 1985, Fielding retired. On June 26, 1985, a notice was posted for the vacancy under the title of "Acting Director of the Lafayette Program." (J-9) On August 1, 1985, McMillan was appointed to that position, and in March 1986, she became permanent Director of the Lafayette Program.

By letter dated August 13, 1986, the title of Director of the Lafayette Program was approved by County Superintendent Donald Vansant for use in the 1986-87 school year. (J-19) Pursuant to N.J.A.C. 6:11-3.6(b), this approval was contingent upon annual review of the continued appropriateness of the proposed title. On August 4, 1987, Dr. Vansant approved the title for use in the 1987-88 school year. (J-19-B)

The Lafayette Program provides special education for approximately 55 neurologically impaired and emotionally disturbed

^{2/} The Lafayette School building was closed and no longer used as a school facility.

students. It has its own budget, which is approved by the Board, and operates on a non-profit basis from tuition paid by the students' sending districts.

The staff of the Program consists of the Director, five classroom teachers, five aides, four special area teachers,^{3/} one Speech Therapist, one Psychologist/Social Worker, one Nurse,^{4/} one Learning Disability Teaching Consultant and one Secretary. The Director supervises and evaluates all Lafayette Program employees except the Music teacher, who reports to the Middle School Principal. In addition, the Director's duties include overseeing the operation of the entire Lafayette program and acting as a liaison with the sending districts. The Director, who works on a 12-month basis, coordinates the screening and interviewing process of students applying into the program.^{5/} The Director is supervised by the Superintendent. It is uncontested that McMillan's predecessor, Fielding, while Principal of the Lafayette Program, performed the same duties as are now being performed by McMillan.

3/ These are a full time Physical Education teacher who works only for the Lafayette Program and uses the VanDerveer School's gym; a 2/5 time Art teacher who shares the Art Room with the VanDerveer Art teacher; a 1/5 time Music teacher and a 4/5 time Woodshop Teacher who works only for the Lafayette Program in a facility in the wing used only by the Lafayette Program.

4/ The nurse works 1/2 time for the Lafayette Program.

5/ All other duties are set forth in the Director's job description submitted for consideration as J-1.

There are approximately eight other special education teachers employed in the Somerville School District.^{6/} These teachers are supervised by Mr. Bolitsky, the Supervisor of Pupil Personnel, Ancillary Services and Federal and State Programs. Bolitsky oversees the district's entire special education program, including the Lafayette Program, but he does not have authority over the Director.

The VanDerveer Elementary School is one of two elementary schools in the district. In addition, there is one Middle School and one High School. Each building has its own Principal. The Principal of the VanDerveer school is Ms. Pavol. Pavol has no authority over the students, budget, supplies, teachers or physical facility ("C" wing) of the Lafayette Program.^{7/} The elementary school and Lafayette Program are separate in all respects, with the exception of an occasional shared assembly.

The Principals' Organization represents all building Principals and Vice Principals.^{8/} Each Principal oversees the

^{6/} Three in the other (Central) elementary school, two in the Middle School, and three in the High School.

^{7/} Conversely, the Director of the Lafayette Program has no authority over the remainder of VanDerveer School's physical plant.

^{8/} Prior to 1983, the Director of Instruction was in the Principal's bargaining unit. However, due to increasing duties involving representation of the Board in collective negotiations, the parties agreed to exclude this title as

operation of their individual building. This includes approximately 300 students and 35-40 certificated personnel in each of the two elementary schools and the Middle School, and approximately 1000 students and certificated personnel in the High School. Principals are responsible for the physical plant and grounds of their buildings, including the cafeteria and heating facilities. In addition, Principals, who work on a 12-month basis, supervise building staff and interact regularly with parents and the community.^{9/} Principals are evaluated by the Superintendent.

The Supervisor's Association represents all supervisors district wide. Supervisors are responsible for overseeing instruction in a particular subject area. They work with and evaluate teachers on all levels K-12 (approximately 40 in each area), develop curriculum and course study, submit budgetary requests, preliminarily interview and recommend for employment teachers in their discipline.^{10/} Supervisors, who also work on a 12-month basis, are housed in a central office and travel between

8/ Footnote Continued From Previous Page
confidential.

Also, during the 1970's the title of Director of Pupil Personnel and Ancillary Services was in the Principal's bargaining unit. Now, that title is included in the Supervisor's Association.

9/ All other duties are set forth in the Principal's job description, submitted for consideration as J-2.

10/ All other duties are set forth in the Supervisor's job description, submitted for consideration as J-3.

the schools. Supervisors are not responsible for the physical plant of any of the school buildings unless it directly relates to their subject area (example, Science Lab). The Director of Instruction evaluates Supervisors.

Analysis

The issue to be decided is in which unit (Principals or Supervisors), if any, should the title of Director of the Lafayette Program be placed. Having reviewed the facts it is clear that either unit would be "appropriate" for inclusion of the Director. This position has elements of community of interest with both units. Thus, the question then becomes which is the "most appropriate" unit.

The Commission favors broad-based units. In State of NJ and Prof. Assn. of N.J., 64 N.J. 231 (1974). In resolving questions of community of interest, the Commission has set forth several factors which must be considered:

...[U]nity of interest, common control, dependent operation, sameness in character of work and unity of labor relations as pointing to common interest. They regard similarity of obligation to the employer as a factor; likewise similarity of working conditions; they consider the possible disruptive effect on employer-employee relations if the employees involved are admitted to one unit. They decide whether the group involved will operate cohesively as a unit; whether the unit will probably be effective in the public quest for industrial peace. Community of interest has been regarded as identity of interest. An important consideration is whether

an employee sought to be included in a unit is one from which the other employees may need protection; whether his inclusion will involve a potential conflict of interest.

Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404, 420-421 (1971).

In the instant case, when examining the details of each position, none of these factors stand out as precluding the Director's title from inclusion in one or the other unit. Accordingly, I am compelled to compare the titles on the most basic level in order to determine with which group the Director's title would be most compatible.

The position of Director of the Lafayette Program resembles that of Supervisor in the attention to, and concern with, a specific subject area on a district-wide basis. Much like a Science Supervisor who oversees the science program in the district, the Director of the Lafayette Program oversees a specific area of the district's special education program. Both positions have no authority whatsoever with regard to the physical plant in which the respective programs are located, and as such are not responsible for the necessary day-to-day functions which make a school building run efficiently.

However, when viewed in terms of the main purpose or objective of the position, it appears that the Director has more in common with the Principals than with the Supervisors. Supervisors are primarily focussed on the type and range of instruction being provided to students in a given discipline. This focus is narrow in scope because it is specifically tied to instruction in a certain

subject area and does not take into consideration the many other elements which make up a complete educational experience. Moreover, because their purview is spread out district-wide, Supervisors do not exercise their authority over a cohesive, centralized, self-contained educational unit.

This is not true of the Director of the Lafayette Program. The Lafayette Program is a cohesive, self-contained group. It exists in and of itself as a part of the larger Somerville special education program, much like one school building exists as part of the whole, broader district. In addition, the Director, similar to a Principal in his or her building, oversees the entire educational experience of the students in the program. This is less specialized than the responsibility of a Supervisor who is tied specifically to instruction and to a certain subject area. Accordingly, I conclude that the Director of the Lafayette Program has more of a community of interest with the employees represented by the SSAA or the Principals' Organization and thus, should be placed in that unit for purposes of collective bargaining.


In reaching this conclusion, I was additionally persuaded by the past history of the position of Director of the Lafayette Program. But for the declining enrollment, the program would probably have remained in the separate building, and the Director's title would probably have stayed as Principal. While it is true that with a separate building come additional responsibilities, those responsibilities are not significant enough to take the

Director out of the realm of compatibility with other Principals. Further, that the title remained Principal for five years after the program moved to the VanDerveer School evidences an acknowledgement on the part of the Board that the duties of the two positions were closely aligned. Accordingly, I find that the Principals' unit is the "most appropriate" unit for the Director of the Lafayette Program.

Recommendation

Based on the entire record presented in this matter and the above analysis, I recommend that the parties agree to place the Director of the Lafayette Program in the Principals' unit (SSAA).^{11/}

Dated: November 16, 1987
Trenton, New Jersey



Susan A. Weinberg
Commission Designee

^{11/} By this recommendation I am not suggesting that the Board change the title back to Principal, nor am I suggesting that the Director be automatically placed on the Principals' salary scale. If the parties agree to place the Director in the SSAA unit, the SSAA will be required to negotiate over the appropriate compensation for this position.